

**SUMMARY**  
**OF**  
**CONFLICT OF INTEREST**  
**AND**  
**OTHER ETHICS LAWS**  
**FOR**  
**CITY AND REDEVELOPMENT AGENCY OFFICERS AND EMPLOYEES**  
**CITY OF SAN JOSE**

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This Summary is intended as general background and a summary of the conflict of interest and ethics laws. For more specific guidance and for answers to questions about the laws, please contact the City Attorney's Office.

**CONFLICT OF INTEREST**  
**CITY AND REDEVELOPMENT AGENCY EMPLOYEES**  
**CITY OF SAN JOSE**

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This brief summary of conflict of interest and other ethics laws is intended to serve as an aid to City and Redevelopment Agency Officers and Employees. Please do not hesitate to consult the City Attorney's Office or General Counsel's Office with any questions you may have about any ethical requirement or for help in determining whether disclosure or disqualification is required in a particular situation.

**CODE OF ETHICS**

Council Policy No. 15 provides a Code of Ethics applicable to all City officers, employees and consultants. The Code prohibits certain activities and provides that in addition to any other penalties provided by law, violations of the Code may be used as a basis for disciplinary action. Activities prohibited by the Code include:

1. Direct or indirect financial interest in enterprises, activities, or entities which may create a substantial conflict between an employee's private interests and official duties.
2. Acceptance of money, favors or other consideration from anyone other than the City for the performance of an act required or expected in the performance of the employee's regular duties.
3. Acceptance of gifts, gratuities or favors which might reasonably be interpreted as an attempt to influence the employee's official actions. Gifts which are acceptable under the City's Code of Ethics are also listed.
4. Use of confidential information obtained in the course of employment for speculation or personal gain. **Note:** Under certain circumstances, violation of this provision is punishable as a misdemeanor. Gov. Code § 1098.

5. Use, for private gain or advantage, of City time, the City's facilities, equipment or supplies, or the employee's official status.
6. Incompatible employment.
7. Discrimination against any person based on race, religion, color, creed, age, marital status, national origin, ancestry, sex, sexual preference, medical condition, or handicap.

The Code of Ethics also requires an employee to report to his or her supervisor, any discussions of future employment with persons presently dealing with the City concerning matters within the employee's current decision-making responsibilities.

An employee is strongly encouraged to disclose, to the extent not expressly prohibited by law, improper governmental activities within his or her knowledge. Such disclosures should be made to the employee's supervisor or appointing authority. Additionally, the City Council adopted a Prospective Employment Ordinance which is described below.

#### **FINANCIAL CONFLICT OF INTEREST- POLITICAL REFORM ACT**

The Political Reform Act of 1974 prohibits any public official from **making, participating in the making or in any way attempting to use** his or her official position to **influence** a governmental decision in which the official knows or has reason to know he or she has a financial interest. While only designated employees must disclose their financial interests, **all City and Agency officers and employees are public officials for the purposes of disqualification.**

##### **A. Financial Interest**

A public employee has a financial interest in a decision, if it is reasonably foreseeable that the governmental decision will have a **material** financial effect, distinguishable from its effect on the public generally, on the employee or a member of his or her family, or on any:

1. **Business entity** in which the public employee has a direct or indirect investment worth **\$2,000** or more;

2. **Real property** in which the employee has a direct or indirect interest worth **\$2000** or more;
3. **Source of income** (other than gifts and other than loans by commercial lending institutions in the regular course of business on terms available to the public generally) aggregating **\$500** or more provided to, received by, or promised to the employee within 12 months prior to the time when the decision is made;
4. **Business entity** in which the public employee is a director, officer, partner, trustee, employee or holds any position of management; or
5. **Donor** of, or any intermediary or agent for a donor of, a gift or gifts aggregating **\$320** or more in value provided to, received by, or promised to the public employee within 12 months prior to the time the decision is made. (The gift limit is adjusted biennially by the state Fair Political Practices Commission to reflect changes in the Consumer Price Index.)

An indirect investment or interest means any investment or interest owned by the spouse or **dependent** child of the employee, by an agent on behalf of the employee, by a business entity or trust in which the employee, the employee's agents, spouse or dependent children own directly, indirectly or beneficially a **10% or greater** interest. Investments and interests in real property held by, or amounts paid to **adult children** who are not dependents do not create a conflict. Sources of income to an employee's adult or dependent children also do not create a conflict and need not be disclosed.

These standards also apply if the decision affects a business entity that is a parent, subsidiary or otherwise related business entity of another business entity in which the employee has an investment, receives income, or holds a management position.

While it is not necessary to disclose your principal **residence** on the disclosure form, your principal residence is real property for purposes of decision-making. In other words, a designated employee may not participate in a governmental decision which has a prohibited financial effect on the employee's residence.

Salary and reimbursement for expenses from state, local or federal **government** agencies or reimbursement for travel expenses and per diem from **educational**, academic or **charitable** organizations does not count as income. However, other payments from such non-profit entities, including for example, salary and gifts, are considered income for purposes of disclosure and disqualification.

## **B. Governmental Decisions**

An employee **makes** a governmental decision when he or she appoints a person; obligates or commits his or her agency to any course of action; enters into any agreement on behalf of his or her agency; or determines not to do any of the above except for the act of disqualifying himself or herself.

An employee **participates** in the making of a governmental decision when the employee:

1. Negotiates, without significant substantive review, with a governmental or private person regarding the decision; or
2. Advises or makes recommendations to the decision-maker by conducting research, making an investigation, or presenting reports, analyses or opinions.

An employee **uses** his or her official position to influence a governmental decision if he or she contacts or appears before, or otherwise attempts to influence, any officer, employee, or consultant of the agency for the purpose of influencing a decision. There are several exceptions to this prohibition including:

1. An employee may appear in the same manner as any other member of the public before the Council or a City Board or Commission solely to represent his or her own personal interests. Personal interests include, but are not limited to, real property or a business entity wholly owned by the employee or members of his or her immediate family, or a business entity directed or controlled either solely by the employee or jointly by only the employee and his or her spouse.
2. An employee may communicate with the general public or the press.

## **C. Materiality**

The financial effect of a governmental decision is material if the decision will have a **significant** financial effect on the employee or a member of the employee's immediate family, or on an economic interest of the employee. The factors which are used by the Fair Political Practices Commission to determine materiality are set forth in the following Section entitled "Factors in Determining Material Financial Effect."

## **D. Effect on the Public Generally**

It is not necessary for an employee to disqualify himself or herself from participating in a decision where the decision will affect the employee's interest in **substantially the same manner** as it will affect all members of the public or a **significant segment** of the public. This narrow exception applies even if it is determined that the reasonably foreseeable effect of a decision is material.

The Regulations of the Fair Political Practices Commission set out the criteria to determine whether this exemption can be applied. For example, if a governmental decision affects 10 percent of the population or all homeowners or 5,000 individuals in the jurisdiction, this is considered a significant segment of the public. The exception will apply if the governmental decision will affect the public official's economic interest in substantially the same manner as it will affect the significant segment of the public. An industry, trade or profession is not considered a significant segment or predominant industry, trade or profession unless it constitutes 50 percent or more of business entities in the public official's jurisdiction. The Regulations treat a nonprofit entity other than a government entity as a business entity for purposes of the public generally exception for industries, trades or professions.

#### **E. Separate Analysis of All Economic Interests**

Some decisions may have an effect on more than one economic interest. All interests must be analyzed to determine whether there is any material effect requiring disqualification. For example, a Planning Department employee may be a local homeowner and have a spouse who is a real estate broker. A decision to amend a generally applicable zoning regulation in which the employee participates and which may affect the value of **all** existing single-family homes must be analyzed as to the effect:

1. on the employee as a homeowner,
2. on the spouse's business, and
3. on the spouse's clients who are sellers of single-family homes and who are sources of at least \$500 in commission income to the spouse within 12 months of the decision.

Persons who own three or fewer housing units represent a significant segment of the public. Therefore, the "public generally" exception applies to the employee as a homeowner. Even though the zoning change may have a material effect on all owners of single-family homes, the employee would not be disqualified by the effect on his or her home's value or on the value of the spouse's clients' homes. However, the decision's effect on the value of single family homes could increase or decrease the real estate business' commissions from the sales of such homes.

If it is determined that this effect materially increases or decreases the business' gross revenues, the employee must be disqualified.

**F. Disqualification**

When an employee has a conflict, he or she must **disqualify** himself or herself from participating, in any way, in the decision.

**FACTORS IN DETERMINING**  
**MATERIAL FINANCIAL EFFECT**

The following analysis is necessary whenever an employee has **any economic interest** on which a governmental decision will have a reasonably foreseeable effect.

**Will the decision affect the Employee's interest in substantially the same manner as it will affect a significant segment of the public?**

1. If **yes**, Employee is **not** disqualified even if the effect is determined to be material under FPPC regulations.
2. If **no**, Employee is disqualified if the effect is determined to be material under the following FPPC regulations.

**Interests Directly Involved in the Decision**

Is the Employee's economic interest **directly** involved in the decision such that:

1. The Employee's or his or her immediate family's **income, expenses, assets** (other than interests in real property) or **liabilities** will be increased or decreased by \$250 or more;
2. The Employee's **source of income** of \$500 or more in the preceding 12 months is the applicant or the subject of a proceeding, including a proceeding regarding any license, permit, or other entitlement to, or contract with, the source of income, or the Employee receives income to achieve a goal or purpose which would be achieved, defeated, aided, or hindered by the decision;



3. A **business entity** in which the Employee has an investment (\$2,000 if an investment in a Fortune 500 corporation or one which is trade on the New York Stock Exchange is \$2000 or more but less than \$25,000, materiality must be analyzed below as interests indirectly involved in decisions); **or**
4. The employee has an ownership interest of \$2,000 or more in **real property** which is the **subject** of a decision involving the legal use of property, zoning, annexation, taxes or redevelopment (certain general zoning and land use decisions which are applicable to all property within a designated category are **excepted**).

**If yes to any of the above, disqualification is required unless**

1. The decision will have **no** financial effect on the employee's economic interest **or**
2. The decision affects only the salary, per diem or reimbursement for expenses to the employee or his or her spouse from a state or local government agency. Not included in this exception are decisions which affect a spouse's employment status (hire, fire, demote, promote, discipline) or set a spouse's salary in an amount which is different from salaries paid to other employees in the spouse's job classification or position. However, the FPPC regulations set out materiality standards where a source of income are non-profit entities including governmental entities such as, for example, where an official receives a payment under a contract from a governmental entity which is not considered "salary." (2 Cal. Code Regs. § 18705.3).

**Interests Indirectly Involved in the Decision**

If the employee's economic interest is **indirectly involved in the decision** (i.e., not the applicant or subject of the proceeding) disqualification will be required under the following circumstances:

1. **Business Entity\***

**Effect is Material If:**

a. **Fortune 500 Companies**

1. \$10,000,000 Effect on Gross Revenues.
2. \$2,500,000 Effect on Expenses.

3. \$10,000,000 Effect on Assets or Liabilities.

**b. New York Stock Exchange Companies**

1. \$500,000 Effect on Gross Revenues.
2. \$200,000 Effect on Expenses.
3. \$500,000 Effect on Assets or Liabilities.

\*All effects on gross revenues and expenses are measured over a fiscal year. If more than one of the categories of materiality standards are applicable to a business entity then the category with the highest dollar threshold should apply. Standards are applied to an entity which is listed on the NY and NASDAQ/AMEX exchanges or to an entity which meets the financial criteria for listing on those exchanges.

**c. NASDAQ/AMEX Companies**

1. \$300,000 Effect on Gross Revenues.
2. \$100,000 Effect on Expenses.
3. \$300,000 Effect on Assets or Liabilities.

**d. Business Entities Not Covered by the standards above.**

1. \$20,000 Effect on Gross Revenues.
2. \$5,000 Effect on Expenses.
3. \$20,000 Effect on Assets or Liabilities.

## 2. Ownership Interests in Real Property

In order to determine materiality for real property interests it is first necessary to determine whether the property in which an official or employee has an interest was directly or indirectly involved in a decision.

- a. Real property is **directly** involved in a governmental decision, if that property is the subject of the governmental decision or if any part of that property is located within 500 feet of the boundaries (or proposed boundaries) of the real property which is the subject of the government decisions. (2 Cal.Code of Regs. § 18704.2).
- b. The financial effect of a governmental decision on **directly** involved real property is **presumed to be material**. This presumption may be rebutted by proof that it is not reasonably foreseeable that the decision will have any financial effect on the property.
- c. The financial effects of a governmental decision on real property which is **indirectly involved**, for example, property which is located beyond 500 feet of the boundaries of the property which is the subject of the decision, is **presumed not to be material**. However, this presumption may be rebutted by proof that there are specific circumstances regarding the decision, its financial effect and the nature of the property in which the official or employee has an interest, which make it reasonably foreseeable that the decision will have a material financial effect on the official's or employee's property. (2 Cal. Code of Regs. § 18705.2).

## 3. Leasehold Interest in Real Property

- a. The financial effect of a decision on **directly** involved real property leaseholds is **presumed to be material**. This presumption may be rebutted by proof that it is not reasonably foreseeable by having no effect on, for example, the termination date of the lease, amount of rent paid for the leased property or the value of the lessee's right to sublease the property. (2 Cal. Code of Regs. § 18705.2).

- b. The financial effect of a governmental decision on leaseholds which are **indirectly involved** in the governmental decision is **presumed not to be material**. This presumption may be rebutted by proof that there are specific circumstances which make it reasonable foreseeable, for example, that the decision will change the legally allowable use of the leased property and the lessee has the right to sublease the property or the decision will change the lessee's actual use of the property. (2 Cal. Code of Regs. § 18705.3).

3. **Non-Profit Entity Including Governmental Entities - Source of Income or Gifts**

**Material Effects on Entities Having the Following Gross Annual Revenues:**

- a. \$400,000,000 or more
  1. \$1,000,000 Effect on Gross Revenues.
  2. \$250,000 Effect on Expenses.
  3. \$1,000,000 Effect on Assets or Liabilities.
- b. \$100,000,001 to \$399,999,999
  1. \$400,000 Effect on Gross Revenues.
  2. \$100,000 Effect on Expenses.
  3. \$400,000 Effect on Assets or Liabilities.
- c. \$10,000,001 to \$100,000,000
  1. \$200,000 Effect on Gross Revenues.
  2. \$50,000 Effect on Expenses.
  3. \$200,000 Effect on Assets or Liabilities.
- d. \$1,000,001 to \$10,000,000
  1. \$100,000 Effect on Gross Revenues.
  2. \$25,000 Effect on Expenses.
  3. \$100,000 Effect on Assets or Liabilities.

- e. \$100,001 to \$1,000,000
  - 1. \$50,000 Effect on Gross Revenues.
  - 2. \$12,500 Effect on Expenses.
  - 3. \$50,000 Effect on Assets or Liabilities.
- f. \$100,000 or less
  - 1. \$10,000 Effect on Gross Revenues.
  - 2. \$2,500 Effect on Expenses.
  - 3. \$10,000 Effect on Assets or Liabilities.

5. **Individual Source of Income or Gifts**

**Effect is Material if:**

- a. \$1,000 Effect on Individual's income, investments or assets (other than real property); **or**
- b. Effect on Individual's real property is material applying standards for ownership and leasehold interests in real property.

**LOANS**

**A. Prohibition from Receiving Loans**

The Political Reform Act prohibits local elected governmental officials from receiving personal loans in excess of \$250 from any officer, employee, member, consultant or contractor of a local agency in which the elected officer holds office or over which the elected officer's agency has direction or control. This means that Councilmembers cannot receive a loan of more than \$250 from any other Councilmember of the City or any other officer, consultant or contractor of the City.

Nonelected public officials listed in the Act such as the City Manager, City Attorney, city treasurer, Planning Commissioners and persons who manage the City's investments including a city treasurer are also subject to these same prohibitions. However, the prohibition does not apply to loans made by banks or other financial institutions in the regular course of business.

**B. Loan Requirements**

In addition to the prohibitions above, the Act precludes **elected** public officials from accepting any personal loans for more than \$500 unless they are in writing and clearly state the terms of the loan, including the parties, date of the loan, amount, the date when payments are due, and the rate of interest on the loan. (Government Code Section 87461).

The requirement that the loan be in writing does not apply to loans made to the campaign committee of the elected officer or candidate for elective officer, loans made by a public official's relative or loans made in writing before January 1, 1998. Further, the requirement does not apply to loans made by banks or other financial institutions in the regular course of business.

### **C. Unpaid Loans - Gifts**

The Act also provides that a personal loan received by any public official (elected officials, as well as any other local governmental official who is required to file an annual Statement of Economic Interests) will be subject to gift and reporting limitations under the following two circumstances:

1. If the loan has a defined date for repayment and has not been repaid, then the loan will become a gift when the statute of limitations for filing an action for default has expired.
2. If the loan has no defined date or dates for repayment, then the loan will become a gift if it remains unpaid one year after the later of (a) the date the loan was made; (b) the date the last payment of \$100 or more was made on the loan; or (c) the date upon which the official has made payments aggregating to less than \$250 during the previous 12-month period.

### **TRANSPORTATION DISCOUNTS**

The California Constitution prohibits public officers from accepting free passes or discounts from transportation companies including railroads and airlines and both interstate and intrastate carriers, offered to the officer on the basis of his or her official position. City officers and designated employees should not accept any travel discounts **not** offered to the general public as a whole. **The acceptance of a free pass or discount which violates this prohibition may result in a forfeiture of office or employment.**

### **FINANCIAL INTEREST IN CONTRACTS**

Government Code Section 1090 precludes public officers and employees from being financially interested in any **contract** made by them in their official capacity. The "making" of a contract, for the purposes of Section 1090, include any negotiation, discussion, planning, or any other participation in or influence over the decision to contract. A willful violation of this provision is subject to criminal penalties and **permanent disqualification from holding any office** in this state.

Certain interests are deemed insufficient by statute to invoke the prohibitions of Section 1090. For example, an employee shall not be deemed interested in a contract if his or her interest is that of ownership of less than 3% of the shares of a corporation which is the source of 5% or less of the employee's total annual income. Another interest in a contract which is insufficient to invoke the Section 1090 prohibition is that of a non-salaried member of a nonprofit corporation, provided that such interest is disclosed to the City or Agency at the time of the first consideration of the contract, and noted in the official records regarding the contract.

A particular contract must be analyzed under both Section 1090 and the Political Reform Act (see pp. 1-6). A contract otherwise allowable under the Act may be prohibited under Section 1090. Conversely, a contract which may fall within one of the exceptions to Section 1090's prohibition may invoke the disqualification requirement of the Act.

### **CDBG**

Federal law prohibits any City or Agency employee who exercises any functions or responsibilities with respect to Community Development Block Grant assisted activities from obtaining any personal or financial interest or benefit from a CDBG activity or from having an interest in any contract, subcontract or agreement related to the activity. The prohibition also applies to any employee who is in a position to participate in the decision-making process or gain inside information with regard to CDBG activities.

Employees are prohibited from having such an interest for themselves, their family, or those with whom they have business ties during their tenure or for one year thereafter.

A CDBG member or City or Agency official who has received or knows that he or she will receive a financial interest or benefit from a CDBG applicant must either resign the position held with the CDBG applicant, cause the organization to withdraw its application or receive an exception from the Department of Housing and Urban Development (HUD). Federal regulations make the absence of such a conflict a requirement for receiving CDBG funds. Therefore, a violation of the conflict of interest prohibition could result in a loss of funding to the recipient. However, HUD is empowered to grant an exception to these provisions, under certain circumstances, upon a written request from the City.

### **REDEVELOPMENT LAW**

Health and Safety Code Section 33130 prohibits a Redevelopment Agency officer or employee, or a community officer or employee, who participates in the formulation of or approves plans or policies for redevelopment of a project area to **acquire** any interest in any property in a redevelopment area. The prohibition does not apply to the lease of business property within a redevelopment area at fair market value or to longtime property or business owners in the area who remain in the project area after project area formation under owner participation rights or business re-entry preferences. (Business re-entry preferences are the reasonable preferences extended to businesses displaced by redevelopment activity to be considered for re-entry into the project area.)

If such person has any existing direct or indirect financial interest in property within a redevelopment area, **INCLUDING** any ownership interest that is not prohibited, as described above, the interest must be disclosed in writing and such written disclosure must be formally disclosed to both the Agency and the City Council and entered into the minutes of the meeting at which the interest was disclosed. Failure to make such disclosure constitutes misconduct in office.

### **OUTSIDE EMPLOYMENT**

Government Code § 1126 precludes a public officer or employee from engaging in **any** employment, activity or enterprise **for compensation** which is incompatible with his or her duties as an officer or employee, or with the duties,



functions or responsibilities of the City or Redevelopment Agency. An employee may not perform any outside work for compensation where any part of his or her efforts will be subject to approval by any City or Agency officer, employee, board, or commission.

Each appointing power (Council Appointee or the Agency's Executive Director), subject to the Council's approval, determines when an outside position is incompatible. **Any** outside work involving a potential conflict of loyalties may be prohibited. Section 1126 lists examples of what may be prohibited, including activities which involve:

1. the use for private gain of City or Agency time, facilities, equipment or supplies, or the badge, uniform, prestige or influence of office or employment;
2. the acceptance by the officer or employee of any outside consideration for any act which would be expected of him or her in the regular course of his or her duties as a City or Agency officer or employee;
3. the performance of an act in other than his or her capacity as a City or Agency officer or employee which may later be subject to the control, inspection, review, audit or enforcement by the City or Agency; or
4. such time demands as would render the performance of his or her duties as a City or Agency employee or officer less efficient.

The rules adopted by the City of San Jose governing outside employment for City Officials and employees are found in the Municipal Code at Section 3.04.1710 and to Agency employees in the Personnel Policy Guidelines for the San Jose Redevelopment Agency.

Under the Code, an employee is prohibited from engaging in any outside work which prevents or impedes the efficient performance of his or her duties in City employment or which is detrimental to, or conflicts in any way with, his or her City employment. All City or Agency employees considering outside employment must apply to their Appointing Authority for an Outside Work permit prior to acceptance of the employment offer. Violation of this rule may be grounds for disciplinary action.

#### **GIFT LIMITATIONS**

City and Agency officers and designated employees are prohibited from receiving any gift, directly or indirectly, from persons whose interest or whose employer's or client's interest was (within 2 years prior to the time the gift is given), or could be, materially affected by a decision.

Certain gifts are not prohibited including:

1. Token gifts from any one donor not exceeding \$15 in any calendar year;
2. Honoraria and awards; (Acceptance of honoraria by designated employees is **prohibited** under state law, if the employee is required to report receiving income or gifts from that source on the statement of economic interests (Form 700).)
3. Admission and other nominal benefits provided for speaking or participating in a panel or seminar;
4. Under certain conditions, job interview expenses, prizes, flowers, plants or balloons;
5. Informational materials;
6. Meals and beverages in a business or social setting;
7. Free admission to the employee from the **sponsor** of a ceremonial, political, civic or community event;
8. Gifts exchanged between an employee and an individual other than a local government lobbyist on ceremonial occasions are permitted to the extent that the value of the gift received by the employee does not exceed the value of the gift(s) given to the individual.

If a prohibited gift is received, the employee must not use it and, within 30 days, must either return it to the donor or deliver it to a charitable organization without claiming it as a deduction for tax purposes.

A gift which is treated as and remains City property is not considered a gift to an employee. Sometimes gifts are given in a ceremonial situation to an employee in his or her official capacity or as a representative of the City. These gifts become the property of the City unless the City Council votes to allow the employee to retain it.

Discounts and rebates are gifts unless made in the regular course of business to members of the public or unless made available to all City officers and employees. In addition, a gift includes most travel expenses and the community property interest in a gift to a spouse.

Several gifts which are permitted under the Municipal Code are still considered "income" by the FPPC for purposes of reporting and disqualification. For example, the following must be reported as gifts if their value is \$50 or more: certain meals and beverages provided in a business or social setting, flowers, plants, balloons, and prizes. Prizes or awards **not** received on the basis of a bona fide competition not related to the recipient's status as an employee are reportable as **income**. Payments or reimbursements for job interview expenses of \$250 or more from a private employer and for certain other travel expenses are also reportable.

The FPPC does **not** require reporting of the following gifts permitted under the Municipal Code:

1. Informational materials.
2. Under certain conditions, free admission from an event's sponsor.
3. Hospitality, including food, beverages or lodging provided by an individual in his or her home.
4. Gifts exchanged between an employee and an individual to the extent that the value of the gift received does not exceed the value of the gift given to the individual.
5. Admission, food, beverages, other nominal benefits and reimbursement for **intrastate** travel and lodging provided to an employee at an event at which he or she speaks, participates in a panel or seminar, or performs a similar service. However, payments received in connection with such activities, including payment or reimbursement for travel **outside** California, must be reported as income if the services provided were of equal or greater value than the payment received, or, if not, as a gift.

The Municipal Code requires each City and Redevelopment Agency officer and designated employee to report annually certain gifts received during the reporting period by such officer's or employee's spouse or dependent child. The gifts which must be reported include those which would have been prohibited to the officer and employee.

### **PROSPECTIVE EMPLOYMENT**

The Prospective Employment Ordinance in Chapter 12.15 of the Municipal Code requires Council members, Council Appointees, Assistant or Deputy City Managers, Assistant Redevelopment Executive Director and Department Directors to disclose **all** discussions of prospective employment with employers whose financial interests could be materially impacted or affected by decisions made or influenced by the official or employee.

Other officials and employees such as members of Boards and Commissions, managers who are determined by their Appointing Authority to exercise critical decision making or program management responsibility and Council Assistants would be required to disclose **actual** employment offers from prospective employers on a disclosure statement. Additionally, those officials and employees would be required to sign a statement which attests that they will not use their City position, or information or knowledge acquired in their employment to influence employment offers or to give an advantage to prospective employers who currently or potentially do business with the City.

Prospective Employment Disclosure forms for officers and employees are available from the offices of the Appointing Authorities.

The Ordinance prohibits all officials and covered employees who are offered or who discuss prospective employment from participation in decisions involving a prospective employer. This includes matters before the City which affect the financial interest of a prospective employer or which are being lobbied by the employer.

### **CONCURRENT EMPLOYMENT**

In addition to the Outside Work permit requirements (see pp. 7-8), Municipal Code Section 12.14.010 requires disclosure of concurrent employment by certain outside employers of any City or Redevelopment Agency officer or full-time employee. A local governmental lobbyist and certain clients of such lobbyists must disclose within ten (10) days after such outside employment commences, the nature of the employment, the name of the City or Agency officer or employee so employed, the amount of pay or consideration, and the date such employment commenced.

### **REVOLVING DOOR PROHIBITIONS**

Municipal Code Section 12.10.010 et seq. prohibits certain activities by former officers or employees of the City or Redevelopment Agency, within one year after such person's employment has ceased. These prohibitions apply only to matters in which the officer or employee **exercised responsibility or participated within one year prior to the termination of such employment.**

A former officer or employee shall not represent, in any way, any person other than himself or herself, in connection with any proceeding or matter in which the City or Agency has a direct or substantial interest.

The basic prohibitions of the Ordinance are:

1. For a period of one year after leaving City or Agency employ, designated employees may not lobby the City or Agency on behalf of anyone else on any matter. This not only means that designated employees cannot appear before the City Council/Agency Board or City Commissions, but they also cannot approach staff on any one else's behalf.
2. For a period of one year after leaving City or Agency employ, designated employees may not work on any matter on which they worked during the year before they left the City or Agency.
3. For a period of one year after leaving City or Agency employ, designated employees may not receive any gifts prohibited by the City's Gift Ordinance, from any person who was in any way involved in or affected by the employee's work during the year prior to termination of service.

The above prohibitions **do not apply to**

1. Subsequent employment with another governmental entity is exempted. Therefore, a former City or Agency employee may work on any matter, and may lobby the City and Agency on behalf of a subsequent government employer.
2. City or Agency employees may work on any matter and may lobby on behalf of certain non-profit organizations. To qualify, an organization must be designated as a non-profit by the IRS and

must have received financial or other formal support from the City within the past five (5) years.

3. The Ordinance also provides that the City or Agency may contract with a former employee, as an independent contractor, to provide certain transitional services involving technical or specialized knowledge, in order to complete a project or provide temporary services. The former employee may not be paid more than he or she was receiving (including benefits) at the time he or she left City or Agency employment.
4. A former employee is not prohibited from working as a supervisor of a person performing work that would otherwise be prohibited so long as the former employee does not personally participate in the work and receives no part of the fee. This provision requires an "ethical wall" to be erected, shielding the former employee from the work his or her subordinates are performing under contract with the City or Agency.

In addition to other remedies provided by the Code, violations of the above prohibitions may result a civil action against the former employee for recovery of any compensation or monetary value of any gift received by the former employee in violation of the Ordinance.

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